



administrator. Claimant testified that on the date of his accident, March 11, 1996, he was driving a golf cart to a location in the respondent's plant to investigate an accident. Claimant testified that as he stepped out of the golf cart, he pushed off with his left leg and immediately felt a sharp pain in his back. The pain worsened to the point he could hardly get out of bed the next day. Claimant testified that he sought treatment the next day, March 12, 1996, through his family physician, Ron J. Reichenberger, M.D. Dr. Reichenberger's medical records admitted into evidence at the preliminary hearing indicated that claimant made complaints of pain in his back that radiated down his left leg. Dr. Reichenberger's medical records also contain a previous visit from claimant on March 4, 1996 where claimant made complaints of bilateral low back pain with pain shooting predominantly more down his right leg than his left. At that time, claimant gave a history of previous back problems that resolved without medical treatment. The medical notes of March 4, 1996 indicated claimant had sought medical treatment because the symptoms had persisted for over a month. Dr. Reichenberger commented during the examination of claimant on March 12, 1996 that claimant's left leg complaints were brand new and his right leg was pretty much asymptomatic. Dr. Reichenberger scheduled claimant for an MRI and continued claimant on pain medication.

Claimant was off work on March 12 and 13 and returned to work on March 14 when he was seen by Boeing Central Medical. Boeing Central Medical, after taking a history of his complaints, referred claimant for further treatment to Bernard T. Poole, M.D., an orthopedic surgeon in Wichita, Kansas. Claimant returned to work but remained symptomatic. Claimant's preliminary hearing requests were payment of all medical treatment as authorized, appointment of Dr. Poole as the authorized treating physician and temporary total disability benefits to be paid if taken off work by Dr. Poole.

Respondent denied claimant's request for benefits, arguing that claimant's current low back problem occurred in the course of his employment but the injury had not arisen out of his employment. Respondent argued that the facts of this case are identical to the facts found in Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980). In Martin, the Kansas Court of Appeals affirmed a district court decision that denied benefits because claimant's injury did not arise out of and in the course of his employment. The claimant, a long-term employee of the school district, had a long history of previous back problems. He alleged he injured his back when he felt a sharp pain that radiated down his left leg when he exited his vehicle in the parking lot of a school. Whether the claimant was on his way to work or was already at work when he felt this pain in his back is not completely clear from reading the court opinion. However, the court did find that the facts determined claimant was in the course of his employment when the injury occurred. *Id.* at 299. Therefore, one would assume that the claimant was already at work when the injury occurred and not on his way to work. The court, in affirming the district court, held that the facts presented by this case, established that the risk involved in claimant's accident was not associated with his employment but was a personal risk and, therefore, not compensable. *Id.* at 300.

The Administrative Law Judge granted claimant's request for preliminary compensation benefits and, although not specified in his Order, had to find that claimant's alleged injury arose out of and in the course of his employment. The Appeals Board agrees and, thus, affirms the Administrative Law Judge's preliminary hearing Order. Whether an accident arises out of and in the course of a worker's employment is a question of fact. Messenger v. Sage Drilling Co. 9 Kan. App. 2d 435, Syl. ¶ 3, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984). If a work-related accident either aggravates,

accelerates or intensifies a preexisting condition, the claim is compensable. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978). The Appeals Board finds claimant's testimony and the medical records contained in the preliminary hearing transcript established that claimant had a prior low back condition and the low back condition worsened as a result of claimant stepping out of the golf cart while performing his regular work duties for the respondent. The Appeals Board finds claimant's current low back injury arose out of the nature, conditions, obligations and incidents of his employment. Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 502, 704 P.2d 394, rev. denied, 238 Kan. 878 (1985).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated May 23, 1996, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1996.

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BOARD MEMBER

c: Dale V. Slape, Wichita, KS  
Vaughn Burkholder, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director